

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Cynthia L. Merlini,

Plaintiff,

v.

Canada,

Defendants.

Case No. 1:17-cv-10519-NMG

The Honorable Nathaniel M. Gorton

DEFENDANT CANADA’S MOTION TO DISMISS

Defendant Canada, by and through its counsel, moves pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss this action with prejudice. In support of its Motion, Canada submits the accompanying Memorandum of Law and states as follows:

1. Plaintiff seeks relief under Section 66 of the Massachusetts’ Workers’ Compensation Act, which allows an employee to bring suit against an employer when injured during the course of employment if, and only if, the employer is considered an “uninsured employer” under the Act. The act imposes strict liability on “uninsured employers,” irrespective of fault.

2. The Court should dismiss Plaintiff’s claims for the following reasons:

A. First, this Court lacks subject matter jurisdiction pursuant to Rule 12(b)(1) because Canada, as a foreign state, is presumptively immune from the jurisdiction of U.S. courts under the Foreign Sovereign Immunities Act. Plaintiff’s formulaic attempts to avail herself the statute’s narrow exceptions are unavailing.

B. Second, this Court lacks subject matter jurisdiction pursuant to Rule

12(b)(1) and Plaintiff fails to state a claim for relief under Rule 12(b)(6) because the issue of whether Canada was an “uninsured employer” under the Massachusetts’ Workers’ Compensation Act was already decided against Plaintiff when she sought relief in front of the Massachusetts Department of Industrial Accidents Reviewing Board. The Reviewing Board held that Canada was not “uninsured” in violation of the statute, and that holding is entitled to preclusive effect and cannot be relitigated in this Court.

- C. For these reasons, as set forth in detail in Canada’s Memorandum of Law, the Court should dismiss Plaintiffs’ claims with prejudice pursuant to 12(b)(1) and 12(b)(6).

WHEREFORE, Defendant Canada respectfully requests that this Court dismiss Plaintiff’s complaint with prejudice.

Dated: June 19, 2017

Respectfully submitted,

/s/ D.E. Wilson, Jr.

D.E. Wilson, Jr. (*pro hac vice forthcoming*)
Andrew E. Bigart (*pro hac vice forthcoming*)
Benjamin Horowitz (*pro hac vice forthcoming*)
VENABLE LLP
600 Massachusetts Avenue
Washington, D.C. 20001
Telephone: (202) 344-4819
Facsimile: (202) 344-8300
dewilson@venable.com
aebigart@venable.com
behorowitz@venable.com

/s/ Chrisann Leal

Paul M. Moretti, BBO #552488
Chrisann Leal, BBO 566402
Michael C. Houlihan, BBO #690573
CURTIN, MURPHY & O'REILLY, P.C.
Park Square Building, 3rd Floor
Boston, Massachusetts 02116
Telephone: (617) 574-1700
Facsimile: (617) 574-1710
pmoretti@cmopc.com
cleal@cmopc.com
mhoulihan@cmopc.com

Certificate of Service

I, Chrisann Leal, hereby certify that true copy of the above document was served upon the attorney of record for the Plaintiff electronically on June 19, 2017.

/s/ Chrisann Leal